



Bristol County Superior Court

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PETER R. ANDRADE, ESQ.
 1st ASSISTANT CLERK

MARCEL W. GAUTREAU, ESQ.
 ASSISTANT CLERK - CRIMINAL BUSINESS

OFFICE OF THE CLERK/MAGISTRATE
 9 COURT ST., ROOM 13.
 TAUNTON, MASSACHUSETTS 02780
 TAUNTON TEL. (508) 823-6588
 FALL RIVER TEL. (508) 672-4464
 NEW BEDFORD TEL. (508) 996-2051

August 23, 2005

3511718

U.S. District Court
 One Courthouse Way
 Boston, MA 02210

Re: Brightman v. J.C. Penny, Inc.
 Do. No.: BRCV2005-753A

Dear Sir/Madam:

Please be advised that on today's date the above entitled matter was removed from Bristol Superior Court to the United States District Court. Enclosed please find attested copies of the case.

If you should have any questions or concerns, please contact the Bristol Superior Court Clerk's Office.

Marc J. Santos
 Very truly yours,
 CLERK/MAGISTRATE

Marc J. Santos
 Clerk of Courts

MLB
 Enclosures

Case Summary
Civil Docket**BRCV2005-00753**
Brightman v JC Penney, Inc.

File Date	07/11/2005	Status	Disposed: transferred to other court (dtrans)
Status Date	08/22/2005	Session	A - CtRm 1 - (Fall River)
Origin	1	Case Type	B20 - Personal Injury-Slip&Fall
Lead Case		Track	F

Service	10/09/2005	Answer	12/08/2005	Rule 12/19/20	12/08/2005
Rule 15	12/08/2005	Discovery	05/07/2006	Rule 56	06/06/2006
Final PTC	07/06/2006	Disposition	09/04/2006	Jury Trial	Yes

PARTIES

Plaintiff Collette Brightman 55 Reservoir Road Acushnet, MA 02743 Active 07/11/2005	Private Counsel 017000 Stephen J Amaral 190 William Street New Bedford, MA 02740 Phone: 508-996-6765 Fax: 508-996-4353 Active 07/11/2005 Notify
Defendant JC Penney, Inc. Dartmouth, MA 02747 Served: 07/20/2005 Served (answr pending) 07/28/2005	Private Counsel 156600 Richard R Eurich Morrison Mahoney LLP 250 Summer Street Boston, MA 02210-1181 Phone: 617-439-7508 Fax: 617-342-4932 Active 08/23/2005 Notify
Other interested party FILE COPY Active 07/11/2005 Notify	Private Counsel 567234 Philip M Hirshberg Morrison Mahoney LLP 250 Summer Street Boston, MA 02210 Phone: 617-439-7500 Fax: 617-439-7590 Active 08/23/2005 Notify

ENTRIES

Date	Paper	Text
07/11/2005	1.0	Complaint & civil action cover sheet filed

Commonwealth of Massachusetts
BRISTOL SUPERIOR COURTCase Summary
Civil Docket**BRCV2005-00753**
Brightman v JC Penney, Inc.

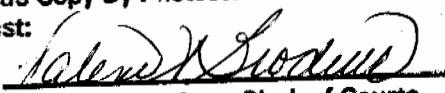
Date	Paper	Text
07/11/2005		Origin 1, Type B20, Track F.
07/14/2005		One Trial case upon review of judge, this matter shall remain in Superior Court. (Richard T. Moses, Justice)
07/28/2005	2.0	SERVICE RETURNED (summons): JC Penney, Inc., service made on July 20, 2005 (agent in charge service)(Sue Costa)
08/22/2005	3.0	Notice for Removal to the United States District Court filed by JC Penney, Inc.
08/22/2005		Case REMOVED this date to US District Court of Massachusetts

EVENTS

Date	Session	Event	Result
07/11/2005	CtRm Main - (Taunton)	Status: by clerk Initial One Trial Review	Event held as scheduled

A True Copy By Photostatic Process

Attest:


Asst. Clerk of Courts

CLERK'S OFFICE MARC J. SANTOS, ESQ.	
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS	
BRISTOL COUNTY, MASSACHUSETTS	DOCKET NO:
COLLETTE BRIGHTMAN, Plaintiff, v. J.C. PENNEY, INC., Defendant.	

NOTICE OF REMOVAL TO**UNITED STATES DISTRICT COURT**

for the District of Massachusetts

- I hereby certify that the foregoing document is true and correct copy of the
 electronic docket in the captioned case
 electronically filed original filer docket
 original filed in my office on 07/21/2005

Sarah A. Thornton
Clerk, U.S. District Court
District of Massachusetts

BY
Deputy Clerk

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Please take notice, pursuant to 28 U.S.C. Section 1446, that the defendant as named above, J.C. Penney, Inc. (so-called), properly named as J.C. Penney Corporation, Inc., respectfully petitions this Court for removal of the above-captioned action, from the Bristol County Superior Court (Bristol Superior Court) of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. The grounds for removal are as follows:

1. On or about July 11, 2005, the above plaintiff filed a Complaint against the above defendant, J.C. Penney, Inc., in the Commonwealth of Massachusetts, Bristol Superior Court, captioned Collette Brightman v. J.C. Penney, Inc., Civil Action Number BRCV2005-00753. A true and accurate copy of said Summons and Complaint is attached hereto as Exhibit "A." Plaintiff served a copy of her Summons and Complaint upon J.C. Penney Corporation, Inc., mis-named in the Complaint as J.C. Penney, Inc., on July 21, 2005.¹

¹In filing this Notice of Removal, the defendant does not waive any defenses with regard to service of process or the adequacy of process.

2. This civil action is pending in Bristol County Massachusetts, and accordingly, under 28 U.S.C. §§101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal.

3. The present action is a civil action in which this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, and may be removed to this Court pursuant to 28 U.S.C. §1446.

4. Although the plaintiff has stated as damages an amount less than \$75,000 in her state court "Civil Action Cover Sheet," attached hereto as Exhibit "B," wherein plaintiff itemizes certain medical expenses totaling \$14,782.06, it is the defendant's position in seeking removal herein that the amount in controversy would indeed exceed \$75,000, based upon the nature of plaintiff's personal injury claims. See e.g. DeAguilar v. Boeing Co., 47 F. 3d 1404, 1411-12 (5th Cir. 1995). Therefore, plaintiff states that the amount in controversy does meet the statutory requirement.

5. Based upon the allegations in plaintiff's Complaint, the plaintiff is a resident of the Commonwealth of Massachusetts, Bristol County.

6. Plaintiff alleges that the defendant, J.C. Penney, is a corporation with a usual place of business in Dartmouth, Bristol County, Massachusetts. While a J.C. Penney retail store is located at such location, the defendant (misnamed in the Complaint), states that J.C. Penney Corporation, Inc., the defendant as properly named, is a Delaware Corporation with its principal place of business located at 6501 Legacy Drive, Plano, Texas.

7. The defendant, as properly named J.C. Penney Corporation, Inc., is neither a resident of the Commonwealth of Massachusetts nor has a principal place of business in Massachusetts.

8. This Notice of Removal has been filed within thirty (30) days of service of the Complaint upon the defendant, and thus has been filed in a timely manner pursuant to U.S.C. §1446.

9. Because complete diversity of citizenship exists between plaintiff and defendant, and as defendant takes the position that the amount in controversy in this action exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), removal is proper pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1446.

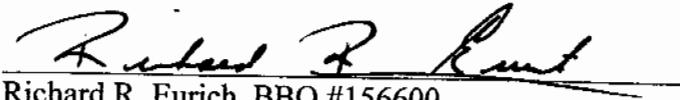
10. Written notice of this motion will be given to the plaintiff promptly after the filing of this motion.

11. The defendant will file a notice of the filing of this Notice of Removal and a copy of this Notice of Removal with the Clerk of the Superior Court of Bristol County for the Commonwealth of Massachusetts.

12. Pursuant to Local Rule 81.1(A), the defendant shall request of the Clerk of the Bristol County Superior Court, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, for the foregoing reasons, the defendant J.C. Penney Corporation, Inc., misnamed in the Complaint as J.C. Penney, Inc., respectfully requests that the above-captioned matter pending in the Superior Court of Bristol County, Massachusetts be removed and that this Court take jurisdiction for trial and determination.

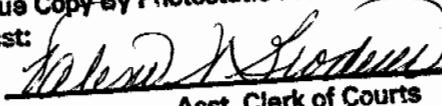
The Defendant,
J.C. Penney Corporation, Inc., misnamed as J.C.
Penney, Inc.
By its attorneys,


Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO #567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210-1181
(617) 439-7500

Dated: 8/18/05

A True Copy By Photostatic Process

Attest:


Helen N. Giordano
Asst. Clerk of Courts

CERTIFICATE OF SERVICE

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document, by certified mail, return receipt requested to Stephen J. Amaral, Joseph P. Harrington, P.C., 190 William Street, New Bedford, MA 02740.

Dated: August 18, 2005

Philip M. Hirshberg

Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO#567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210
(617) 439-7500

FILED

JUL 11 2005

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

BRISTOL, SS

SUPERIOR COURT
DOCKET NO. A05-753

COLLETTE BRIGHTMAN,
Plaintiff

VS.

COMPLAINT

JC PENNEY, INC.,
Defendant

1. Your Plaintiff is Collette Brightman, 55 Reservior Road, Acushnet, MA 02743.
2. Your Defendant is JC Penney, Inc., a corporation with a usual place of business in Dartmouth, Bristol County, Massachusetts.
3. On February 23, 2004, the Defendant was in control of a store located in the North Dartmouth Mall in Dartmouth, Bristol County, Massachusetts.
4. On the same date, the Plaintiff was lawfully upon the premises controlled by the Defendant.
5. The Defendant so negligently and carelessly permitted shelving, which was being moved by the Defendants, its agents, servants, employees to remain in the aisle, without any warning or guards, so that the premises were dangerous and unsafe for customers therein, including the Plaintiff.
6. As a result thereof, the Plaintiff was caused to trip and fall, sustain serious injuries, suffered great pain of body and mind, and was obliged to expend money for her medical care and treatment.

WHEREFORE, Plaintiff demands Judgment against the Defendant for her damages and costs.

LAW OFFICE OF
JOSEPH P. HARRINGTON,
P.C.
190 WILLIAM STREET
NEW BEDFORD, MASS.
02740-6095

(508) 996-6765

Respectfully Submitted,
Collette Brightman, Plaintiff
By Her Attorney,

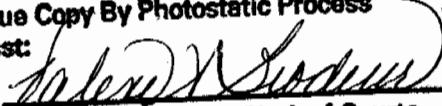
JOSEPH P. HARRINGTON, PC

By:


STEPHEN J. AMARAL
190 William Street
New Bedford, MA 02740
(508) 996-6765
July 7, 2005
BBO # 017000

A True Copy By Photostatic Process

Attest:


Asst. Clerk of Courts

LAW OFFICE OF
JOSEPH P. HARRINGTON,
P.C.
190 WILLIAM STREET
NEW BEDFORD, MASS.
02740-6095

(508) 996-6765

**CIVIL ACTION
COVER SHEET**

A05-753

**Superior Court Department
County: BRISTOL**

PLAINTIFF(S)	Collette Brightman 55 Reservoir Road Acushnet, MA 02743	DEFENDANT(S)	JC Penney, Inc. North Dartmouth Mall Dartmouth, MA 02747
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE	ATTORNEY (if known)		
Stephen J. Amaral Joseph P. Harrington, PC 190 William St., New Bedford, MA 02740 Board of Bar Overseers number: 017000			

Origin code and track designation

Place an x in one box only:

1. F01 Original Complaint
 2. F02 Removal to Sup.Ct. C.231,s.104
 (Before trial) (F)
 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

4. F04 District Court Appeal c.231, s. 97 &104 (After
 trial) (X)
 5. F05 Reactivated after rescript; relief from
 judgment/Order (Mass.R.Civ.P. 60) (X)
 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	T/YPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
B20	Personal Injury Slip & Fall	(F)	(x) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses	\$ 6,598.11
2. Total Doctor expenses	\$ 5,566.00
3. Total chiropractic expenses	\$
4. Total physical therapy expenses	\$
5. Total other expenses (describe) knee brace, MRI services, x-rays, lab, medical equipment	\$ 2,617.95
	Subtotal \$ 14,782.06

B. Documented lost wages and compensation to date

\$

C. Documented property damages to date

\$

D. Reasonably anticipated future medical and hospital expenses

\$

E. Reasonably anticipated lost wages

\$

F. Other documented items of damages (describe)

\$

G. Brief description of plaintiff's injury, including nature and extent of injury (describe) Grade III tear of the ACL, torn medial meniscus and right knee requiring surgical repair.

\$

TOTAL \$ 14,782.06**CONTRACT CLAIMS**

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE:

7/7/05

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

No. 05-753

[SEAL]

COLLETTE BRIGHTMAN

v.

JC PENNEY, INC.

BRISTOL, SS SUPERIOR COURT

, Plaintiff(s) FILED

JUL 28 2005

, Defendant(s)

MARC J. SANTOS, ESQ.

CLERK/MAGISTRATE

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED :

TORT — ~~MOTOR VEHICLE TORT~~
~~CONTRACT~~
~~EQUITABLE RELIEF~~
~~OTHER~~

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon Joseph P. Harrington

plaintiff's attorney, whose address is 190 William Street, New Bedford, Ma., 02740; an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at New Bedford either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Suzanne V. Del Vecchio, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 13th day of July, in the year of our Lord two thousand and five.



Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer or agency thereof is a defendant, the time to be inserted is 60 days.



Bristol County Deputy Sheriffs' Office • P.O. Box 8928 • New Bedford, MA 02742-0928 • (508) 992-6631

Bristol, ss.

July 22, 2005

I hereby certify and return that on 7/20/2005 at 07:05 pm I served a true and attested copy of the Summons and Complaint, Ca Cover Sheet, in this action in the following manner: To wit, by delivering in hand to Sue Costa, agent, person in charge at the time of service for JC Penny, Inc., State Road, North Dartmouth, MA 02747. Copies (\$2.00), Conveyance (\$0.75), Travel (\$3.20), Basic Service Fee (\$30.00), Postage and Handling (\$2.75), Attest Fee (\$5.00) Total Charges \$43.70

A handwritten signature in black ink, appearing to read "K. G. Monteiro".

Deputy Sheriff

Deputy Sheriff Kenneth G. Monteiro

N.B. TO PROCESS SERVER:—

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

[Redacted Box], 20

A True Copy By Photostatic Process

Attest:

A handwritten signature in black ink, appearing to read "Linda K. Gordon".

Asst. Clerk of Courts

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT.
OF THE TRIAL COURT
CIVIL ACTION
No.
BRISTOL, ss.

, Plaintiff (s)

, Defendant (s)

v.

SUMMONS
(Mass. R. CIV. P. 4)

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

COLLETTE BRIGHTMAN,
Plaintiff,

v.

J.C. PENNEY, INC.,
Defendant.3
BRISTOL SUPERIOR COURT
DOCKET NO: BRCV2005-00753
BRISTOL, SS SUPERIOR COURT

FILED

AUG 22 2005

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE**NOTICE OF FILING OF NOTICE OF REMOVAL**

Please take notice that a Notice of Removal, a true and correct copy of which is attached hereto, was filed by the Defendant, J.C. Penney Corporation, Inc. (mis-named as J.C. Penney, Inc.), in the office of the Clerk of the United States District Court for the District of Massachusetts, Eastern Division, One Courthouse Way, Boston, MA, on the 18th day of August, 2005, relative to the removal and transfer of the above-captioned action.

The Defendant,
J.C. Penney Corporation, Inc. (mis-named as "J.C. Penney, Inc.")
By their attorneys,



Richard R. Eurich, BBO #156600
 Philip M. Hirshberg, BBO #567234
 MORRISON MAHONEY, LLP
 250 Summer Street
 Boston, MA 02210-1181
 (617) 439-7500

Dated: 8/18/05

CERTIFICATE OF SERVICE

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document, by certified mail, return receipt requested to Stephen J. Amaral, Joseph P. Harrington, P.C., 190 William Street, New Bedford, MA 02740.

Dated: August 18, 2005

[Signature]
Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO#567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210
(617) 439-7500

A True Copy By Photostatic Process
Attest:
[Signature]
Asst. Clerk of Courts

MORRISON MAHONEY LLP

COUNSELLORS AT LAW

Richard R. Eurich
Direct Dial: (617) 439-7508
Direct Fax: (617) 342-4932
reurich@morrisonmahoney.com

250 SUMMER STREET
BOSTON, MASSACHUSETTS 02210-1181
617-439-7500
FACSIMILE: 617-439-7590

MASSACHUSETTS	CONNECTICUT
BOSTON	HARTFORD
FALL RIVER	
SPRINGFIELD	NEW YORK
WORCESTER	NEW YORK
RHODE ISLAND	ENGLAND
PROVIDENCE	LONDON

Philip M. Hirshberg
Direct Dial: (617) 737-8860
Direct Fax: (617) 342-4929
phirshberg@morrisonmahoney.com

August 18, 2005

Bristol County Superior Court
Civil Clerk's Office
Attention: Removal Clerk
441 North Main Street
Fall River, MA 02720

**Re: Collette Brightman v. J.C. Penney, Inc.
Bristol County Superior Court Civil Action No. 05-753**

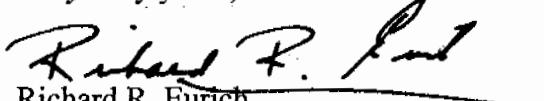
Dear Sir or Madam:

Enclosed for filing and docketing in the above-referenced matter, please find the following:

1. Notice of Filing of Notice of Removal.

Thank you for your cooperation in this matter.

Very truly yours,


Richard R. Eurich
Philip M. Hirshberg

RRE/PMH/
Enclosures

cc: Stephen J. Amaral
Joseph P. Harrington, P.C.
190 William Street
New Bedford, MA 02740
(By Certified Mail, Return Receipt Requested)